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AIR TRANSPORT SERVICES

Agreement Between the
UNITED STATES OF AMERICA
and PAPUA NEW GUINEA

Signed at Port Moresby March 30, 1979

NOTE BY THE DEPARTMENT OF STATE

Pursuant to Public Law 89–497, approved July 8, 1966 (80 Stat. 271; 1 U.S.C. 113)—

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PAPUA NEW GUINEA

Air Transport Services

Agreement signed at Port Moresby March 30, 1979;
Entered into force provisionally March 30, 1979;
Entered into force definitively June 27, 1979.

AIR TRANSPORT AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF PAPUA NEW GUINEA

The Government of the United States of America and the Government of Papua New Guinea,

Recognizing the importance of international air transportation between the two countries and desiring to conclude an agreement which will assure its continued development in the common welfare, and

Being parties to the Convention on International Civil Aviation opened for signature at Chicago on the seventh day of December 1944, [1]

Have agreed as follows:

ARTICLE 1

DEFINITIONS

For the purpose of the present Agreement:

A. "Agreement" shall mean this Agreement, the Schedule attached hereto, and any amendments thereto.

B. "Aeronautical authorities" shall mean, in the case of the United States of America, the Civil Aeronautics Board or the Department of Transportation, whichever has jurisdiction, or their successor agencies, and in the case of Papua New Guinea, the Department of Transport and Civil Aviation, or, in both cases, any person or agency authorized to perform the functions exercised at present by those authorities.

[1] TIAS 1591, 6605, 6681; 61 Stat. 1180; 19 UST 7693; 20 UST 718. [Footnote added by the Department of State.]

C. "Designated airline" shall mean an airline that one Contracting Party has notified the other Contracting Party to be an airline which will operate in accordance with the provisions of this Agreement. Such notification shall be communicated in writing through diplomatic channels.

D. "Territory" shall mean the land areas under the sovereignty, jurisdiction or trusteeship of a Contracting Party and territorial waters adjacent thereto.

E. "International air service" shall mean an air service which passes through the airspace over the territory of more than one State.

F. "Stop for non-traffic purposes" shall mean a landing for any purpose other than taking on or discharging passengers, cargo or mail carried for compensation.

G. "Price or Pricing" means the fare, rate, or price and its conditions or terms of its availability charged or to be charged by an airline and or its agents for the public transport of passengers, baggage and/or cargo (excluding mail).

ARTICLE 2

GRANT OF RIGHTS

A. Each Contracting Party grants to the other Contracting Party the following rights for the conduct of international air services by the airlines of that other Contracting Party:

(1) The right to fly across its territory without landing; and

(2) The right to make stops in its territory for non-traffic purposes.

B. Each Contracting Party grants to the other Contracting Party the rights specified in this Agreement for the purpose of operating international air services in accordance with the provisions of this Agreement. The airline or airlines designated by one Contracting Party may make stops in the territory of the other Contracting Party for the purpose of taking on board and discharging international traffic in passengers, cargo or mail, separately or in combination.

ARTICLE 3

DESIGNATION AND AUTHORIZATION

Each Contracting Party shall have the right to designate an airline or airlines for the purpose of operating air services in accordance with the provisions of this Agreement. On receipt of a designation made by one Contracting Party and on receipt of an application or applications from the airline so designated for operating authorization and technical permission in the form and manner prescribed for such applications, the other Contracting Party shall, without undue delay, grant the appropriate operating and technical permissions, provided it is satisfied that:

(1) the designated airline is qualified to meet the conditions prescribed under the laws and regulations normally applied to the operation of international air services by the Contracting Party considering the application or applications;

(2) substantial ownership and effective control of that airline are vested in the Contracting Party designating the airline or its nationals; and

(3) the other Contracting Party is maintaining and administering safety and security standards as set forth in Article 6(B).

ARTICLE 4

REVOCATION OR SUSPENSION OF OPERATING AUTHORIZATION

Each Contracting Party shall have the right to revoke or suspend the operating or technical permissions referred to in Article 3 of this Agreement with respect to an airline designated by the other Contracting Party, or to impose conditions on such permissions, in the event that:

(1) that Contracting Party is not satisfied that substantial ownership and effective control of such airline are vested in the Contracting Party designating the airline or in nationals of that Contracting Party;

(2) such airline fails to comply with the laws and regulations referred to in Article 5 of this Agreement; or

(3) that other Contracting Party is not maintaining and administering safety and security standards as set forth in Article 6(B).

ARTICLE 5

APPLICATION OF LAWS

A. The laws and regulations of one Contracting Party relating to the admission to or departure from its territory of aircraft engaged in international air navigation, or to the operation and navigation of such aircraft while within its territory, shall be applied to the aircraft of the airline or airlines designated by the other Contracting Party and shall be complied with by such aircraft upon entrance into or departure from and while within the territory of the first Contracting Party.

B. The laws and regulations of one Contracting Party relating to the admission to or departure from its territory of passengers, crew, cargo or mail of aircraft, including regulations relating to entry, clearance, immigration, passports, customs, and quarantine, shall be complied with by or on behalf of such passengers, crew, cargo or mail of the airlines of the other Contracting Party upon entrance into or departure from and while within the territory of the first Contracting Party.

ARTICLE 6

SAFETY

A. Certificates of airworthiness, certificates of competency, and licenses issued or rendered valid by one Contracting Party, and still in force, shall be recognized as valid by the other Contracting Party for the purpose of operating the routes and services provided for in this

Agreement, provided that the requirements under which such certificates or licenses were issued or rendered valid are equal to or above the minimum standards which may be established pursuant to the Convention on International Civil Aviation. Each Contracting Party reserves the right, however, to refuse to recognize, for the purpose of flights above its own territory, certificates of competency and licenses granted to its own nationals by the other Contracting Party.

B. The competent aeronautical authorities of each Contracting Party may request consultations concerning the safety and security standards and requirements relating to aeronautical facilities, airmen, aircraft, and the operation of the designated airlines which are maintained and administered by the other Contracting Party. If, following such consultations, the competent aeronautical authorities of either Contracting Party find that the other Contracting Party does not effectively maintain and administer safety and security standards and requirements in these areas that are equal to or above the minimum standards which may be established pursuant to the Convention on International Civil Aviation, they will notify the other Contracting Party of such findings and the steps considered necessary to bring the safety and security standards and requirements of the other Contracting Party to standards at least equal to the minimum standards which may be established pursuant to said Convention, and the other Contracting Party will take appropriate corrective action. Each Contracting Party reserves

the right to withhold or revoke the technical permission referred to in Articles 3 and 4 of this Agreement with respect to an airline designated by the other Contracting Party, or to impose conditions on such permission, in the event the other Contracting Party does not take such appropriate action within a reasonable time.

ARTICLE 7

AVIATION SECURITY

The Contracting Parties reaffirm their grave concern about acts or threats against the security of aircraft, which jeopardize the safety of persons or property, adversely affect the operation of air services and undermine public confidence in the safety of civil aviation. The Contracting Parties agree to provide maximum aid to each other with a view to preventing hijackings and sabotage to aircraft, airports and air navigation facilities and threats to aviation security. They reaffirm their commitments under and shall have regard to the provisions of the Convention on Offences and Certain Other Acts Committed on Board Aircraft, signed at Tokyo on 14 September 1963, [1] the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at the Hague on 16 December 1970, [2] and the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 23 September 1971. [3] The Contracting Parties shall also have regard to

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[1] TIAS 6768; 20 UST 2941.
[2] TIAS 7192; 22 UST 1641.
[3] TIAS 7570; 24 UST 564.
[Footnotes added by the Department of State.]

applicable aviation security provisions established by the International Civil Aviation Organization. When incidents or threats of hijacking or sabotage against aircraft, airports or air navigation facilities occur, the Contracting Parties shall assist each other by facilitating communications intended to terminate such incidents rapidly and safely. Each Contracting Party shall give sympathetic consideration to any request from the other for special security measures for its aircraft or passengers to meet a particular threat.

ARTICLE 8

USER CHARGES

Each Contracting Party may impose or permit to be imposed just and reasonable charges for the use of public airports and other facilities under its control, provided that such charges shall not be higher than the charges imposed for the use of such airports and facilities by its national aircraft engaged in similar international services.

ARTICLE 9

CUSTOMS DUTIES

A. Each Contracting Party shall exempt the designated airline or airlines of the other Contracting Party to the fullest extent possible under its national law from import

restrictions, customs duties, excise taxes, inspection fees, and other national duties and charges on fuel, lubricants, consumable technical supplies, spare parts including engines, regular equipment, ground equipment, stores, and other items intended for use solely in connection with the operation or servicing of aircraft of the airlines of such other Contracting Party engaged in international air service. The exemptions provided under this paragraph shall apply to items:

(1) introduced into the territory of one Contracting Party by or on behalf of the designated airlines of the other Contracting Party;

(2) retained on aircraft of the designated airlines of one Contracting Party upon arriving in or leaving the territory of the other Contracting Party; or

(3) taken on board aircraft of the designated airlines of one Contracting Party in the territory of the other and intended for use in international air service; whether or not such items are used or consumed wholly within the territory of the Contracting Party granting the exemption.

B. The exemptions provided for by this Article shall also be available in situations where the designated airline or airlines of one Contracting Party have entered into arrangements with another airline or airlines for the loan or transfer in the territory of the other Contracting Party of the items specified in paragraph A, provided such other airline or airlines similarly enjoy such exemptions from such other Contracting Party.

ARTICLE 10

FAIR COMPETITION

There shall be a fair and equal opportunity for the airlines of each Contracting Party to operate international air services in accordance with the provisions of this Agreement.

ARTICLE 11

PRICING

A. Each Party shall allow the prices subject to this Agreement to be established by each airline based upon commercial considerations in the marketplace, and intervention by the Parties shall be limited to (1) prevention of predatory or discriminatory prices or practices, (2) protection of consumers from prices that are unduly high or restrictive due to the abuse of monopoly power; and (3) protection of airlines from prices that are artificially low because of direct or indirect governmental subsidy or support.

B. Each Party may require notification or filing with its aeronautical authorities of prices proposed to be charged by airlines of the other Party to or from its territory. A Party requiring such notification or filing of prices shall not discriminate among the airlines of either Party or with respect to airlines of third countries. Such notification or filing

may be required of airlines of either Party no more than forty-five (45) days before the proposed date of effectiveness in the case of passenger prices, and no more than sixty (60) days before the proposed date of effectiveness in the case of cargo prices. Each Party shall permit notifications or filings on shorter notice than set forth above when necessary to enable designated airlines to respond on a timely basis to competitive offerings. Neither Party shall require the notification of filing by airlines of the other Party of prices charged by charterers to the public for traffic originating in the territory of that other Party.

C. If either Party believes that a price proposed or charged by an airline of the other Party for the carriage of international traffic between the United States and Papua New Guinea, including traffic carried on an interline or intraline basis via intermediate points, is inconsistent with the considerations set forth in paragraph (A) of this Article, it shall notify the other Party of the reasons for its dissatisfaction as soon as possible. In the case of a proposed price, such notice of dissatisfaction shall be given to the other Party within thirty (30) days of receiving notification or filing of the price. Either Party may then request consultations which shall be held as soon as possible, and in no event later than sixty (60) days from receipt of the request. The Parties shall cooperate in securing information necessary for reasoned resolution of pricing consultations.

D. If the Parties reach agreement with respect to a price for which a notice of dissatisfaction has been given, based on the considerations set forth in paragraph (A) of this Article, each Party shall exercise its best efforts to put such agreement into effect.

E. In the event that,

(1) in the case of a proposed price, consultations are not requested or an agreement is not reached as a result of consultations; or

(2) in the case of a price already being charged when notice of dissatisfaction is given, consultations are not requested within thirty (30) days of receipt of the notice or an agreement is not reached as a result of consultations within sixty (60) days of receipt of the notice, either Party may take action to prevent the inauguration or continuation of the price for which a notice of dissatisfaction was given, but only with respect to traffic where the first point on the itinerary (as evidenced by the document authorizing transportation by air) is in its own territory. Neither Party shall take unilateral action to prevent the inauguration or continuation of any price proposed or charged by an airline of either Party, except as provided in this paragraph.

F. Notwithstanding the filing requirements that either Party may establish, each Party shall allow any airline of either Party to meet on a timely basis, using short-notice

filing procedures if necessary, any lower or more competitive price proposed or charged by any airline or charterer for the carriage of international traffic to or from its territory. For the purposes of this Article, the term "meet" includes the right to establish (1) an identical or substantially similar price on a direct, intraline or interline routing, notwithstanding differences in conditions relating to routing, roundtrip requirements, connections or aircraft type, or (2) such price through combination of prices.

G. Neither Party shall prevent an airline of a third country from meeting any price of a designated airline of either Party for carriage of international traffic between the United States and Papua New Guinea, provided that the third country allows designated airlines of the first Party to meet any price for carriage of international traffic between the territory of the other Party and that third country. In the event that such reciprocity is not accorded by the third country, neither Party shall take unilateral action to prevent the inauguration or continuation of any price proposed or charged by an airline of a third country between the United States and Papua New Guinea, except with respect to traffic where the first point on the itinerary (as evidenced by the document authorizing travel by air) is in its own territory.

ARTICLE 12

COMMERCIAL OPERATIONS

A. Each designated airline shall have the right to establish and maintain representatives in the territory of the other Contracting Party for management, promotional, information, and operational activities.

B. Each designated airline shall have the right to engage in the sale of air transportation in the territory of the other Contracting Party directly and, in its discretion, through its agents. Such airline shall have the right to sell such transportation, and any person shall be free to purchase such transportation, in the currency of that territory or in freely convertible currencies of other countries.

C. Any price specified in terms of the national currency of one of the Contracting Parties shall be established in an amount which reflects the effective exchange rate (including all exchange fees or other charges) at which the airlines of both Parties can convert and remit the revenues from their transport operations into the national currency of the other Party.

D. Each designated airline shall have the right to convert and remit to its country local revenues in excess of sums locally disbursed. Conversion and remittance shall be permitted promptly and without restrictions at the rate of

exchange in effect for the sale of transportation at the time such revenues are presented for conversion and remittance and shall be exempted from taxation to the fullest extent permitted by national law. If a Contracting Party does not have a convertible currency and requires the submission of applications for conversion and remittance, the airlines of the other Contracting Party shall be permitted to file such applications as often as weekly free of burdensome or discriminatory documentary requirements.

ARTICLE 13

CHARTER AIR SERVICES

A. An airline or airlines of a Party designated for charter air services shall be permitted to operate charter air services in accordance with the rules applicable to charter traffic now or hereafter published by the aeronautical authorities of the Party in which the charter traffic originated, or in accordance with waivers of such rules granted for appropriate reasons. When such rules of one Party apply more restrictive terms, conditions, or limitations to one, or more, of its designated airlines, the designated airlines of the other Party shall be subject to the least restrictive of such terms, conditions or limitations. Moreover, if the aeronautical authorities of either Party promulgate rules applicable to charter traffic which

apply different conditions to different countries, each Party shall apply the most liberal rule to the designated airlines of the other Party.

B. Each Party grants to the other Party the right for the designated airlines of that other Party to uplift and discharge international charter traffic in passengers (and their accompanying baggage) and cargo at any point or points in the territory of the first Party for carriage between such points and any point or points in the territory of the other Party, either directly or with stopover at points outside the territory of either Party or with carriage of stopover or transiting traffic to points beyond the territory of the first Party.

C. Charter traffic:

(1) originating outside the territory of both Parties; or

(2) carried by an airline of one Party, originating in the territory of the other Party, and having a traffic stop beyond the territory of the first Party without an intermediate stopover in the territory of the first Party of at least two consecutive nights;

shall not be covered by this Agreement. However, each Party shall consider applications by designated airlines of the other Party to carry such traffic on the basis of comity and reciprocity.

D. Each Party shall minimize the administrative burdens of filing requirements and procedures on passenger or cargo charterers and designated airlines of the other Party.

E. A designated airline of one Party proposing to carry charter traffic originating in the territory of the other Party shall comply with the applicable rules of that other Party.

F. Neither Party shall require a designated airline of the other Party, in respect of the carriage of charter traffic originating in the territory of that other Party, to submit more than a declaration of conformity with the rules applicable to charter traffic of that other Party or of a waiver of these rules granted by the aeronautical authorities of that other Party.

G. Notwithstanding paragraph (F) above, each Party may require that a designated airline of the other Party provide such advance information with regard to flights as is essential for customs, airport, and air traffic control purposes.

H. Designated airlines shall comply with established procedures in regard to airport slotting and shall provide prior notification of flights or series of flights to the relevant authorities if so required.

I. Neither Party shall require prior approval of flights or notifications of information relating thereto by designated airlines of the other Party, except as provided in paragraphs (E), (F), (G), and (H) above.

ARTICLE 14

CONSULTATIONS

Either Contracting Party may at any time request consultations on the interpretation, application or amendment of this Agreement. Such consultations shall begin within a period of sixty (60) days from the date the other Contracting Party receives the request.

ARTICLE 15

SETTLEMENT OF DISPUTES

A. Any dispute arising under this Agreement, other than disputes where self-executing mechanisms are provided in Article 11, which is not resolved by a first round of formal consultations, may be referred by agreement of the Contracting Parties for decision to some person or body. If the Contracting Parties do not so agree, the dispute shall,at the request of either Contracting Party, be submitted to arbitration in accordance with the procedures set forth below.

B. Arbitration shall be by a tribunal of three arbitrators to be constituted as follows:

(1) within 30 days after the receipt of a request for arbitration, each Contracting Party shall name one arbitrator. Within 60 days after these two arbitrators have been nominated, they shall by agreement appoint a third arbitrator, who shall act as President of the arbitral tribunal;

(2) if either Contracting Party fails to name an arbitrator, or if the third arbitrator is not appointed in accordance with subparagraph (1) of this paragraph, either Contracting Party may request the President of the International Court of Justice to appoint the necessary arbitrator or arbitrators within 30 days. If the President is of the same nationality as one of the Parties, the most senior Vice President who is not disqualified on that ground shall make the appointment.

C. Except as otherwise agreed by the Contracting Parties, the arbitral tribunal shall determine the limits of its jurisdiction in accordance with this Agreement, and shall establish its own procedure. At the direction of the tribunal or at the request of either of the Contracting Parties, a conference to determine the precise issues to be arbitrated and the specific procedures to be followed shall be held no later than 15 days after the tribunal is fully constituted.

D. Except as otherwise agreed by the Contracting Parties or prescribed by the tribunal, each Party shall submit a memorandum within 45 days of the time the tribunal is fully constituted. Replies shall be due 60 days later. The tribunal shall hold a hearing at the request of either Party or at its discretion within 15 days after replies are due.

E. The tribunal shall attempt to render a written decision within 30 days after completion of the hearing or, if no hearing is held, after the date both replies are submitted, whichever is sooner. The decision of the majority of the tribunal shall prevail.

F. The Contracting Parties may submit requests for clarification of the decision within 15 days after it is rendered and any clarification given shall be issued within 15 days of such request.

G. Each Contracting Party shall, consistent with its national law, give full effect to any decision or award of the arbitral tribunal. In the event that one Contracting Party does not give effect to any decision or award, the other Contracting Party may take such proportionate steps as may be appropriate.

H. The expenses of the arbitral tribunal, including the fees and expenses of the arbitrators, shall be shared equally by the Contracting Parties. Any expenses incurred by the President of the International Court of Justice in connection with the procedures of paragraph B (2) of this Article shall be considered to be part of the expenses of the arbitral tribunal.

ARTICLE 16

REGISTRATION WITH ICAO

This Agreement and all amendments thereto shall be registered with the International Civil Aviation Organization.

ARTICLE 17

TERMINATION

Either Contracting Party may at any time give notice in writing to the other Contracting Party of its decision to terminate this Agreement. Such notice shall be sent simultaneously to the International Civil Aviation Organization. This Agreement shall terminate at midnight (at the place of receipt of the notice) immediately before the first anniversary of the date of receipt of the notice by the other Contracting Party, unless the notice is withdrawn by agreement before the end of this period.

ARTICLE 18

ENTRY INTO FORCE

This Agreement shall enter into force provisionally on the date it is signed and into full force on the date an exchange of diplomatic notes confirms its ratification.[1]

IN WITNESS WHEREOF the undersigned, being duly authorized by their respective Governments, have signed the present Agreement.

DONE at Port Moresby this 30th day of March in the year one thousand nine hundred and seventy-nine in two originals in the English language.

Mary S. Olmsted[2]

For the Government of
the United States of America

Niwia Ebia Olewale[3]

For the Government of
Papua New Guinea

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[1] June 27, 1979.
[2] Mary S. Olmsted.
[3] Niwia Ebia Olewale.
[Footnotes added by the Department of State.]

SCHEDULE

A. An airline or airlines designated by the Government of the United States shall be entitled to operate international air services on each of the specified routes, in both directions, and to make scheduled landings in Papua New Guinea at the points specified in this paragraph:

1. From points in the United States via intermediate points to Papua New Guinea and beyond.1/

2. Points on any of the specified routes may, at the option of each designated airline, be omitted on any or all flights.

1/ Service, however, to points beyond Papua New Guinea, including Australia, will not commence prior to July 1, 1981, and the type of equipment which is presently contemplated to be operated will be comparable to B-727-100 type aircraft.

B. An airline or airlines designated by the Government of Papua New Guinea shall be entitled to operate international air services on each of the specified routes, in both directions, and to make scheduled landings in the United States at the points specified in this paragraph:

1. From Papua New Guinea to Honolulu

2. From Papua New Guinea to Guam.

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